IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

Crl.MC.No. 870 of 2004()

CC.937/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR

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PETITIONER:

P.K. JAGADEESH, CIRCLE INSPECTOR OF
POLICE (VIGILANCE), PATHANAMTHITTA.
(FORMERLY THE SUB INSPECTOR OF POLICE,
PANDALAM, POLICE STATION).

BY ADV. SRI.K.SASIKUMAR

RESPONDENTS:

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1. THANKAPPAN PILLAI, S/O. RAMAN PILLAI,
PADMALAYAM VEEDU, POZHIKKAD MURI,
PANDALAM.

2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SRI.SUNNY MATHEW
R2 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 870 of 2004

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Dated this the 5th day of February, 2007

O R D E R

The petitioner, a Sub Inspector of Police, faces allegations under Sections 424 and 427 I.P.C. Cognizance has been taken of those offences against him on the basis of a private complaint filed by the first respondent herein. The first respondent in that private complaint has alleged that a vehicle belonging to him was seized illegally by the petitioner on 7.10.2000 from the house of a friend of his. According to him, this act amounts to the offence punishable under Sections 424 and 427 I.P.C.

2. The petitioner has come to this Court with a prayer that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings. In as much as the decision in **K.M. Mathew** v. **State of Kerala** (1992 (1) KLT 1) stands overruled by the decision in **Adalath Prasad** v. **Rooplal Jindal & ors.** (AIR 2004 SC 4674), the petitioner cannot claim dropping of proceedings in a private complaint before the Magistrate and that is why the petitioner has rushed to this court with this petition under Section 482 Cr.P.C.

3. The petitioner relies on two grounds to claim premature termination of the proceedings against him. First of all he contends that no sanction has been obtained under Section 197 Cr.P.C. and the cognizance taken without such sanction under Section 197 Cr.P.C. is per se illegal. Alternatively and additionally he contends that the allegations raised against him are vexatious and without any substance. Continuation of the prosecution against him amounts to abuse of process of the court for this reason also. The complaint is liable to be quashed, it is submitted.

4. A synoptic resume of events which lead to the present complaint has got to be attempted. The petitioner is a Sub Inspector of Police in the Kerala Police Force. According to him, on 14.10.2000 the vehicle involved in the case was seized as the driver of the vehicle did not have any valid licence or vehicle documents. The seizure was effected on 14.10.2000 and a petty case was registered. For 16 days, from 14.10.2000 to 30.10.2000, the petitioner waited in the hope that the driver/owner of the vehicle would appear before him with the requisite documents relating to the vehicle. No one turned up and this obliged the petitioner to forward the vehicle to the Sub Divisional Magistrate on 30.10.2000 along with a report, copy of which is produced as Annex.A1. The Sub Divisional Magistrate received

the vehicle as per the said report and kept the same in his custody till 7.12.2000. On 7.12.2000 as no one had come before the Sub Divisional Magistrate claiming the vehicle, he returned it to the petitioner with a direction to the petitioner to keep the same in safe custody. Nothing happened thereafter also.

5. On 30.12.2000 the respondent filed the present complaint alleging the commission of the above said offences against the petitioner. Later the respondent filed a petition dt. 10.1.2001 before the Sub Divisional Magistrate to release the vehicle to him. As per order dt. 15.1.2001 the vehicle was released.

6. It will be apposite in this context to mention that from 14.10.2000 to 15.12.2000 the respondent was not shown as the owner of the vehicle in the registration certificate in respect of the vehicle. With effect from 15.12.2000 alone he became the owner of the vehicle.

7. As stated earlier, the complaint is that there was illegal taking into possession of the vehicle on 7.10.2000. As against this the contention of the respondent, the specific contention of the petitioner is that the vehicle was taken into custody not on 7.10.2000, but was seized in accordance with law on 14.10.2000.

8. The controversy about the precise date of taking into custody of the vehicle notwithstanding, it is evident that according to the petitioner he had seized the vehicle on 14.10.2000. The sequence of events narrated above clearly show that right or wrong it was an act done by the petitioner "in the discharge" of or at least in "the purported discharge" of his official duty, which rested on his shoulders in his capacity of a police officer of the Kerala Police.

9. The first question to be considered is about the necessity of sanction. Section 197(1) Cr.P.C. cannot have any application as the petitioner is only a Sub Inspector and sanction of the Government is not necessary to remove him from service. Section 197(1) does not therefore apply.

10. The next question is whether Section 197(2) Cr.P.C. would apply. Under Section 197(3), Section 197(2) will apply if there is a notification to that effect. Before me there is no dispute that there is a notification dt. 6.12.1977, which makes the provisions of Section 197(2) applicable to an officer like the petitioner.

11. The controversy about the precise date of the offence, i.e.

7.10.2000 or 14.10.2000, notwithstanding, the sequence of events clearly show that the petitioner was discharging his official duty or atleast purportedly discharging his official duty. The fact that the vehicle along with a report had admittedly been produced before the Sub Divisional Magistrate on 30.10.2000; that the Sub Divisional Magistrate had returned the vehicle on 7.12.2000 for safe custody; that the respondent was not the registered owner till 15.10.2000; that the vehicle was released to the respondent by the Sub Divisional Magistrate on 15.1.2001 on an application dt. 10.1.2001 filed by the respondent and the fact that the respondent had not raised any complaint from 14.10.2000 (or 7.10.2000) till 30.12.2000 are circumstances eloquently pointing to the acceptability of the version of the petitioner.

12. I am, in these circumstances, satisfied that this is a case where the petitioner is covered by the notification dt. 6.12.1977 under Section 197 (3) Cr.P.C. extending the protection under Section 197(2) to him. Cognizance taken is hence bad for the reason that the requisite sanction has not been obtained.

13. In the nature of the conclusion that I have drawn, as per the discussions above, I find it unnecessary to proceed to consider the second

contention that the allegations are vexatious. Suffice it to say that I find force in that contention also. More detailed discussion on that aspect is unnecessary. The learned counsel for the respondent submits that no observations may be made which would encumber his right to seek relief from the civil court or to seek sanction. I am hence not proceeding to consider the second limb of the contention raised by the petitioner in any greater detail.

14. This Crl.M.C. is accordingly allowed. C.C.No. 937 of 2001 against the petitioner shall stand quashed on the ground that the requisite sanction under Section 197 Cr.P.C. has not been obtained.

(R. BASANT)
Judge

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